

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **VICE CHAIRMAN DEE BROWN**, on January 16, 2003  
at 8 A.M., in Room 455 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Dee Brown, Vice Chairman (R)  
Rep. Larry Jent, Vice Chairman (D)  
Rep. Norman Ballantyne (D)  
Rep. Sue Dickenson (D)  
Rep. Carol Gibson (D)  
Rep. Daniel S. Hurwitz (R)  
Rep. Hal Jacobson (D)  
Rep. Larry Lehman (R)  
Rep. Ralph Lenhart (D)  
Rep. Alan Olson (R)  
Rep. Don Roberts (R)  
Rep. Clarice Schrumpf (R)  
Rep. Frank Smith (D)  
Rep. Pat Wagman (R)  
Rep. Jonathan Windy Boy (D)  
Rep. Cindy Younkin (R)

**Members Excused:** Rep. Debby Barrett, Chairman (R)  
Rep. Arlene Becker (D)  
Rep. Bernie Olson (R)

**Members Absent:** None.

**Staff Present:** Sheri Heffelfinger, Legislative Branch  
Joan Reiman, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 235, 1/8/2003;  
HB 94, 1/6/2003; HB 167, 1/6/2003  
Executive Action: None

**HEARING ON HB 94**

**Sponsor:** REP. BOB LAWSON, HD 80, Whitefish

**Opening Statement by Sponsor:**

**EP. LAWSON** termed lines 20-23 the "meat" of the bill; he would offer an amendment to change words in the title, "may" to "must or shall" to allow public comment. Public comment would be allowed even if not on the agenda, and it must be recorded in the minutes. Executive action could not be taken until that issue is on the agenda. This gives right of participation to citizens.

**{Tape: 1; Side: A; Approx. Time Counter: 0 - 6.9}**

**Proponents' Testimony:**

**Charles Abell, Whitefish**, testified he was here as a citizen, not a school trustee. He said he believed people don't come to school board meetings because they can't talk unless they are on the agenda. This bill would let them talk, but the meeting Chair must control that speech so it is not personal or inappropriate.

**Lance Melton, Attorney, Montana School Board Association (MSBA)**, stated he preferred the bill as written but would accept amendments. "This bill clarifies the law. The present law is hard to comply with, and no matter how groups try to comply, 'they get it wrong' However, the right of privacy is important, to avoid 'input by ambush' on an open-forum type agenda," he said. An example he gave is if an absent employee's performance is discussed at the school board meeting. Mr. Melton suggested line 6 be changed to allow comment on any *public* matter, so a school board should not be obligated to hear comments that are not a public matter.

**Eric Feaver, Montana Education Association - Montana Federation of Teachers (MEA-MFT)** spoke in support of the bill as amended or as would be amended by the sponsor and the MSBA. He urged, "Don't make it hard for folks to speak up. Our society lives on debate, discourse and discussion."

**M. Susan Good, Representing Anaesthesiologists and Neurosurgeons, and Orthopedic Surgeons**, stated that boards write administrative rules which carry the force of law. She said she has worked with many boards and that some boards first take a vote and then allow

comments. Notices that are sent out are not sufficient or timely. That shuts out public participation. Thousands of Montanans are affected by these boards, she said.

**Patrick Judge, Montana Environmental Information Center (MEIC),** also testified in favor.

***{Tape: 1; Side: A; Approx. Time Counter: 6.9 - 21.9}***

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from the Committee:**

**REP. LARRY LEHMAN** asked the sponsor to distinguish between must and may and will and shall: "What do you want the bill to say?"

**REP. LAWSON** said he preferred "must" because of confusion over will and shall. **REP. HAL JACOBSON** wanted clarification if executive action would be affected by the bill. **Lance Melton** said under a 1995 Montana Supreme Court decision, they could not perform executive action until an item is on the agenda.

***{Tape: 1; Side: A; Approx. Time Counter: 21.9 - 24.6}***

**Closing by Sponsor:**

**REP. LAWSON** summed up HB 94 as a good bill; it encourages trust in government. He said he would accept both amendments suggested to "make a great bill better."

***{Tape: 1; Side: A; Approx. Time Counter: 24.6 - 25}***

#### **HEARING ON HB 167**

**Sponsor:** **REP. CLARICE SCHRUMPF, HD 12, Billings**

**Opening Statement by Sponsor:**

**REP. CLARICE SCHRUMPF** conveyed that HB 167 resulted from an audit requested by the Secretary of State. The audit recommended changes in state agency records storage; it codifies record

retention schedules. Most agencies are not complying with state law, which requires sound record management practices, she said. This bill provides that all agencies designate a records manager and review filing systems, and clarifies what a state government record is. She said section 1 addresses the situation where agencies dump records in a box, and the state pays to store them. The current record retention schedule does not have the force of law, she continued. Section 2-3 would allow the Secretary of State and the State Archives to approve alternative record storage facilities. Section 5 clarifies what a state government record is. She gave out Exhibit 1.

**EXHIBIT (sth09a01)**

*{Tape: 1; Side: A; Approx. Time Counter: 25 - 32.7}*

**Proponents' Testimony:**

**Ms. Janice Doggett, Chief Legal Counsel, Secretary of State,** related that in 1977 the state created a State Government and a Local Government Committee to define what records do and do not need to be retained. The current law is unclear about what is not a record. She listed items stored as records including copies of original documents, work papers, newsletters, phone books, Christmas ornaments and other nonrecord material. Records are stored in basements that get flooded. She provided Exhibit 2.

**EXHIBIT (sth09a02)**

**Dal Smilie, Chief Legal Counsel, Department of Administration,** testified he worked with the Secretary of State's office on the bill, and he supports it, especially the part about what is not a record. "We don't have to drown in paper forever."

**Charlene Porcild, State Archives, Montana Historical Society,** asserted the present law's language is inconsistent with professional standards, and she is especially concerned with permanent records of historical significance.

**Greg Noose, Department of Justice,** said he is an appointee to the State Records Committee. He said this bill would help with driver control records, gambling control records and others that agencies keep for regulation or decision making. Sound records management will reduce costs of storage and also legal costs of a motion for discovery which must be made to avoid inadvertent disclosure before agencies can allow records to be viewed, or they can get sued.

**John Northey, Legislative Audit Division Legal Counsel,** pronounced this bill a housekeeping bill.

**Audrey Hinman, Department of Administration,** said she is an appointee to the State Records Committee, and she is in favor of this bill.

*{Tape: 1; Side: A; Approx. Time Counter: 32.7 - 38}*

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 8}*

**Opponents' Testimony:**

**Julia Page, Gardner, Northern Plains Resource Council,** voiced her objections that the transparency of government will be affected under HB 167. Citizens want to see how decisions are made. This bill redefines records and excludes certain materials not required under law to be kept. It is too broad; agencies may throw away documents involved in decisions. It also affects efficiency and reinvents the wheel. "If we hold onto certain records, we won't have to make new consideration of things that have been thought through before," she testified.

**Patrick Judge, MEIC,** said he echoes Ms. Page's concern that the bill frustrates open government.

*{Tape: 1; Side: B; Approx. Time Counter: 8 - 12.3}*

**Informational Testimony:**

**REP. BROWN** stated she and **REP. JACOBSON** sit on the interim audit committee, which oversees this matter.

**Questions from Committee:**

**REP. FRANK SMITH** asked Ms. Page if having a citizen representative on the records management board helped Ms. Page's concerns. "No," **Ms. Page** replied. **REP. SMITH** asked, "Can you suggest how you would want the bill to be phrased?" **Ms. Page** replied she was not in favor of changes and that she came to testify against the bill.

**REP. LARRY LEHMAN** asked if the alternative locations for records are owned or leased by the state. **Ms. Doggett** said they could be in state buildings, but private space is also being used. **REP. LEHMAN** asked if there are excess records, would there have to be additional staff to sort through and eliminate them. **Ms. Doggett** said agencies could go back and do that, but they won't have to. **REP. LEHMAN** asked which agencies **REP. SCHRUMPF** had described as not diligent about their records storage. **Ms. Doggett** said it was in the Legislative Audit report.

**REP. JACOBSON** asked if she felt a compromise definition [of records] could be put together. **Mr. Northey** said "No, the definition in the bill is already a compromise based on input from all parties. It defines what are crucial documents; it is not limited, it is broad. Page 1 line 20 is clear. We don't want 500 copies of a document taking up space." He said agencies were storing records willy-nilly. He added that ownership of records remains with the agency - the Records Center cannot destroy anything without authorization. He said they need a liaison between the center and every agency.

**REP. HURWITZ** asked if the counties would get some direction from the bill. **Ms. Doggett** said, "Yes." **REP. CAROL GIBSON** said she has concerns that Ms. Page brought up regarding phone call slips or sticky notes that the creator thought were important. She asked if the author could note "please keep this for the records". The sponsor deferred to **Ms. Doggett**, who said agencies must keep anything that documents transaction of public business, but the law now requires that they also keep all copies of the original.

**REP. PAT WAGMAN** inquired if there was a fiscal note with this bill. **Legislative staffer Sherri Heffelfinger** replied there was not. **REP. WAGMAN** queried Ms. Page, "What would you need to add to the bill to satisfy your needs?" **Ms. Page** said that was a hard question. She said she is concerned with the tight definition of what a record is, she is thinking of correspondence in agency files concerned with field evaluations or memos to the file, and she is afraid those would be discarded.

**REP. WAGMAN** posed the question, "If I do a fire investigation and take notes and it goes to court, would those notes be records?" **Mr. Northey** said that yes they would. They are records made by a state agency to transact official business. **REP. LARRY JENT** asked, "So the definition of public writing has not been changed

by this bill?" **Mr. Northey** said, "No." **REP. JENT** asked, "Then government e-mail is still fair game for discovery?" **Mr. Northey** said "Yes. A phone message or an e-mail may or may not be. It isn't real simple. There is no effort here to hide or get rid of anything documenting state activity." **REP. JENT** asked if minutes of the State Records Committee are public. **Mr. Northey** replied, "Yes."

*{Tape: 1; Side: B; Approx. Time Counter: 13.3 - 35}*

**Closing by Sponsor:**

**REP. SCHRUMPF** closed the hearing on HB 167, stating it is costly to the state to keep items that should be pitched out.

**HEARING ON HB 235**

**Sponsor:** **REP. JILL COHENOUR, HD 51**

**Opening Statement by Sponsor:**

**REP. COHENOUR** told the committee this is a sharing of information bill. She told a story to give a reason why the bill came forward. A co-worker at Department of Health and Human Services Child Support Enforcement discovered that a person paying child support had not filed a tax return in five years. The supervisor did not encourage her to report it to Department of Revenue. To improve the efficiency of government, she said they need this bill so agencies will share information. She is open to possible amendments on line 5, to remove the word "specifically;" line 7, change "shall" to "may;" and line 9 to add "agencies shall prepare guidelines."

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 7.3}*

**Proponents' Testimony:** None

**Opponents' Testimony:**

**John Alke, Attorney with Montana Dakota Utilities Co.,** declared, "This bill has no function with respect to nonconfidential public information. It serves one purpose regarding confidential information - it allows an agency to get confidential information

from another agency without having to go to court." As an example, he said his company is required by the Public Service Commission (PSC) to disclose trade secrets to make sure they are not violating the law. This bill would let the PSC give out that information. **Mr. Alke** invited the committee to look at existing law. If an agency needed confidential information, they'd go to court and get a subpoena; a district judge would decide if the right to privacy was more important than the agency's desire to know something. The party whose information is being sought could testify against disclosure. But if this bill passes, **Mr. Alke** claimed they would remove the independent arbiter - the court. As an example, he cited the individual income tax code: "Could the Attorney General call Department of Revenue and ask to look at the tax records? You would not know the impact of this bill without looking at every agency's enabling legislation." He urged do not pass.

**Jim Curry, Deputy Director, Montana Department of Transportation,** said he opposes HB 167 for many of the same reasons cited by Mr. Alke. Tax records given to audit firms to verify the number of highway miles constructed in Montana, and also proprietary information on how contractors do business, are all trade secrets.

**John Fitzpatrick, NorthWestern Energy,** cited an article from the newspaper reporting that California lost track of 33,000 sex offenders in the system. He said his point was "any time government creates a data management system, you have potential abuse." If HB 167 passes it multiplies the number of players, he said. His company has confidential tax information, and information regarding homeland security, such as locations of power plants, that doesn't need to be out, he stated. "This bill is far too open-ended, it has no limits, and some of us are liable to be hurt," he added.

**Webb Brown, Montana Chamber of Commerce,** said he dealt with this issue with Department of Revenue, and he also opposes the bill.

**Mary Whittinghill, President, Montana Taxpayers Association,** stated the information required is specific to the purpose of that agency, and could have major unintended consequences.

**Dave Ohler, Chief Legal Counsel, Department of Revenue,** said agencies are in a better position to decide than the Attorney



General's office what information to transfer. He told the members he also opposes the bill.

***{Tape: 2; Side: A; Approx. Time Counter: 7.3 - 20.8}***

**Informational Testimony:** None

**Questions from Committee:** None

**Closing by Sponsor:**

**REP. COHENOUR** said "having agencies in on it will correct the problems," and she is willing to work on an amendment to HB 167.

**ADJOURNMENT**

Adjournment: 9:35 A.M.

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REP. DEBBY BARRETT, Chairman

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JOAN REIMAN, Secretary

DB/JR

**EXHIBIT (sth09aad)**